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No. 80-1305

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ALFRED L. SNAPP & SON, INC., *et al.*,
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO
on the relation of PEDRO BAREZ,
SECRETARY, DEPARTMENT OF LABOR AND
HUMAN RESOURCES,
Respondent.

On Writ Of Certiorari To The United States Court of Appeals For The Fourth Circuit

BRIEF FOR RESPONDENT

PAUL A. LENZINI
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 624-8800

Counsel for Respondent

Of Counsel:

LUIS GUINOT, JR.
LYNDA TROUTMAN O'SULLIVAN
CATHY L. MARTIN
CHAPMAN, DUFF AND PAUL
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

QUESTION PRESENTED

May the Commonwealth of Puerto Rico sue as *parens patriae* for declaratory and injunctive relief against thirty-two Virginia apple growers where federal statutes and regulations entitle United States citizens to priority in employment opportunities over foreign workers and where it is alleged,

a. that the defendant growers have traditionally used crews of Jamaican workers to bring in the annual harvest and resisted attempts by the Commonwealth in 1976 and 1977 to place Puerto Rican workers in the orchards;

b. that the Commonwealth during September 1978 suffered from an overall adult unemployment rate of 18.5 percent and a rural unemployment rate of 23 percent;

c. that, in an effort to find employment opportunities for Puerto Rican workers, the Commonwealth recruited 787 unemployed workers for jobs in defendants' orchards in 1978 but that virtually the entire effort to place such workers was defeated by widespread refusals to hire and termination of employment of Puerto Rican workers;

d. that, of 787 workers recruited by the Commonwealth for work in defendants' orchards, only 420 arrived in Virginia and the flights of the remainder were cancelled on advice of the United States Department of Labor in consequence of the refusal by apple growers to hire Puerto Rican workers who had already arrived at the orchards; and

e. that of the 420 workers who arrived at defendants' orchards at the start of the harvest less than 30 still had employment three weeks later.

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BRIEF FOR RESPONDENT

OPINIONS BELOW, JURISDICTION, STATUTES INVOLVED

Respondent is satisfied with these sections as they appear in Brief for Petitioners at 1-2.[1]

[1] The opinions of the district court and court of appeals are appended to the Petition for Writ of Certiorari (Pet. App.). The brief of the United States Secretary of Labor as amicus curiae is appended to the Supplemental Brief in Opposition to Petition for Writ of Certiorari (Resp. App.). References to the Joint Appendix shall be designated "J.A."

STATEMENT OF THE CASE

This litigation arises out of a larger controversy involving attempts by the Commonwealth of Puerto Rico ("the Commonwealth") to place unemployed agricultural workers in jobs in the annual East Coast apple harvest. Citizens of Puerto Rico are United States citizens who are entitled to priority in employment over foreign workers. The instant action involves an effort by the Commonwealth to secure the federally guaranteed preference for Puerto Rican workers in connection with the harvesting of apples.

Each year thousands of temporary farm workers are needed to bring in the fall apple harvest in East Coast states. Complaint ¶ 60; J.A. 16. In order to meet their labor needs, apple growers have traditionally employed not only local but also out-of-state and foreign workers. Many growers, including petitioners, have customarily used crews of Jamaican workers. (*Id.*)

The Wagner-Peyser Act, 29 U.S.C. § 49 *et seq.*, authorizes the establishment of a federal employment service system and the designation of state employment services to function in conjunction with the federal service. The Department of Labor and Human Resources of the Commonwealth of Puerto Rico[2] is a "state agency" designated under the Act. Regulations promulgated pursuant to the Wagner-Peyser Act, *supra*, provide first for state agency placement of local workers with local agricultural employers. If local workers are not available, the Interstate Clearance System ("ICS") may be used to recruit, through other state agencies, workers available in other states. 20 C.F.R. § 602.2. The purpose of this joint federal-state program is to assist employers in locating workers and workers in securing employment. The Employment Service System processes employment offers throughout the United States, Guam, Puerto Rico, and the Virgin Islands to reach the potential labor pool.

[2] Throughout this brief, unless specifically identified, the United States Department of Labor will be referred to as "USDOL" and the Department of Labor of the Commonwealth of Puerto Rico will be referred to as "PRDOL."

In carrying out the provisions of the Wagner-Peyser Act, PRDOL is required to maintain effective placement services for agricultural and related industry employers and workers, including programs for the intrastate recruitment and transfer of workers as well as programs for the interstate recruitment and movement of workers. 20 C.F.R. § 602.8. PRDOL is also required to provide specified public employment services through local employment office facilities of such number, size, and location as may be necessary in view of population distribution and employment patterns within the state. 20 C.F.R. § 602.11.

While the United States Employment Service endeavors to locate and place United States citizens in all available positions, employers may hire foreign workers under certain stringent conditions subject to the authority of the Immigration and Naturalization Service ("INS"). The Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, authorizes the admission of temporary foreign workers into the United States only "if unemployed persons capable of performing such service or labor cannot be found in this country...." 8 U.S.C. § 1101(a)(15). The Secretary USDOL is charged with responsibility for determining when domestic workers are unavailable such that the entry of foreign workers may be permitted.

An employer who desires to use foreign workers for temporary employment is required to file a temporary labor certification application, including a job offer for U.S. workers, with a local office of a State employment service agency eighty days prior to the expected date of need. The eighty-day period allows sufficient time to determine whether U.S. workers are available. A recruitment period of sixty days is required by the Temporary Labor Certification Process regulations with a determination of availability made by the USDOL Regional Administrator twenty days before the date of need. Temporary labor certification is denied where domestic workers are available. 20 C.F.R. § 655.200, Pet.App. A-34.

As part of the temporary labor certification application, an employer must provide assurances that he will cooperate with

USDOL in the recruitment of domestic workers up until the time the certified foreign workers have departed for the place of employment. 20 C.F.R. § 655.203(d), Pet.App. A-47. The employer also agrees to replace foreign workers, up until fifty percent of their contract periods have expired, with qualified domestic workers who apply for those positions. 20 C.F.R. § 655.203(e), Pet.App. A-48. The employer must offer domestic workers at least the same benefits as he offers foreign workers and may not impose greater restrictions on domestic than foreign workers. 20 C.F.R. § 655.202(a), Pet. App. A-40.

If USDOL has probable cause to believe that an employer has not lived up to the terms of the temporary labor certification, it may initiate an investigation. 20 C.F.R. § 655.210(a), Pet.App. A-56. If it is determined that the employer is not in compliance with those terms, it may deny labor certification in the coming year. 20 C.F.R. § 655.210.

In addition, an aggrieved individual worker may file a complaint with any state employment agency, but the complaint will be investigated by the state agency in which the alleged violation occurred. A party may appeal the state's decision to the USDOL Regional Administrator, 20 C.F.R. § 658.418(c), after he has exhausted his state remedies, 20 C.F.R. § 658.421(a), and USDOL may then conduct further investigation of the complaint and call for a hearing if it deems one appropriate. 20 C.F.R. §§ 658.421(c) and (e), 658.424. The ultimate sanction against an employer found to have failed to comply with the terms of a job order or to have committed other violations is denial of access to the Employment Service System. The state may impose this sanction in accordance with federal regulations. 20 C.F.R. § 658.501(a).

PRDOL is an active member of this employment network. Concerned with its rising level of unemployment, the Commonwealth has attempted since 1976 to refer agricultural workers to East Coast apple growers through the Employment Service System. Complaint ¶ 61; J.A. 16-17. These attempts have been unsuccessful because of resistance by the growers to the employment of Puerto Rican workers. Thus in 1976, despite an agreement by growers' associations to hire 1,000

Puerto Rican workers, East Coast growers hired only 613 workers, most of whom were dismissed almost immediately for alleged unproductivity. During 1977, because of grower litigation over Puerto Rico Public Law No. 87,[3] only ninety-three Puerto Ricans were referred to East Coast growers. Many of these workers were also dismissed for alleged unproductivity. Complaint ¶ 61; J.A. 18.

Public Law No. 87, enacted by the legislature of Puerto Rico in 1962, was designed to protect agricultural workers from "discriminatory or abusive treatment by unscrupulous employers" (J.A. 32), and required employers to negotiate written contracts, containing minimum guarantees fixed through regulation by the Secretary PRDOL, with workers to be employed off island. P.R. Laws Ann. tit. 29, § 529 (1966). Failure to comply with the terms of the law subjects an employer to criminal penalties. *Id.* at § 534. Apple growers took issue with this contract requirement and its conditions as "onerous" and "burdensome." USDOL agreed and took the position that the Puerto Rican workers who insisted on the additional protections afforded them by Public Law 87 were not "available" domestic workers within the meaning of the Immigration and Nationality Act.[4] As a result, Puerto Rican workers were excluded from the domestic work force referred to the growers for the harvests of 1976 and 1977.

The First Circuit subsequently agreed with USDOL's determination that Public Law 87 rendered Puerto Rican workers "unavailable" within the meaning of the Immigration

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[3] Public Law No. 87, P.R. Laws Ann. tit. 29, §§526-534 (1966).

[4] *See* Galan v. Dunlop, 411 F.Supp. 268 (D.D.C. 1975), *appeal dismissed and remanded sub nom.* Galan v. Usery, 551 F.2d 467 (D.C. Cir. 1977) (unpublished). The District Court, Gasch, J., upheld the Department of Labor's determination that Puerto Rican workers who insisted upon the benefits of a contract under Public Law 87 were not legally available. The Farm Labor Executive Committee (representing apple growers in ten East Coast states, including Virginia) and the Shoreham Apple Producers' Cooperative, Inc. (Shoreham, Vermont) intervened as defendants and actively participated in the case.

and Nationality Act.[5] Thereafter, because the provisions of Public Law 87 were serving to bar employment of Puerto Ricans, the Commonwealth legislature amended the law in July 1978 to authorize the Secretary PRDOL to exempt from the provisions of Public Law 87 employers whose job offers are referred through the Interstate Clearance System of the Employment Service System. J.A. 35-36.

In July 1978, then-Secretary Quiros announced his intention to exempt from Public Law 87 those apple growers whose 1978 job orders would be transmitted to Puerto Rico through the Interstate Clearance System. By August 14, 1978, the date certification decisions were to be made by the Regional Administrator, Secretary Quiros had recruited 1,094 Puerto Rican workers. Complaint ¶ 63; J.A. 17. The certification applications of the growers were therefore denied, in whole or in part, based on the availability of Puerto Rican workers to fill 1,094 job orders. Subsequent to August 14, and prior to the beginning of the harvest, enough workers had been recruited in Puerto Rico to satisfy the total number of 2,318 job orders transmitted to Puerto Rico. Complaint ¶ 64; J.A. 17.

Faced with the prospect of large numbers of Puerto Rican workers in jobs traditionally filled by foreign workers, the apple growers, acting through their associations, filed a civil action on August 31, 1978, challenging the propriety of the exemption of the growers from Public Law 87 and the referral of Puerto Rican workers under the Interstate Clearance System.[6] The growers sought an injunction ordering the Secretary USDOL to certify the unavailability of the 1,094 Puerto Rican workers. The growers also requested that the INS Commissioner be ordered to issue temporary visas for those jobs in addition to the 4,531 visas already issued to the growers. In other words, the growers sought to fill all available positions with Jamaican labor, even though Puerto Rican workers had been recruited.

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[5] *See* Hernandez Flecha v. Quiros, 567 F.2d 1154 (1st Cir. 1977), *cert. denied,* 436 U.S. 945 (1978).

[6] Frederick County Fruit Growers Association, Inc. v. Marshall, Civ. No. 78-0086(H) (W.D. Va.), *appeals dismissed and remanded,* 594 F.2d 857 (4th Cir. 1979) (unpublished).

The district court (Turk, Ch.J.) determined that Puerto Rican workers were legally available, but the court nonetheless issued a mandatory preliminary injunction ordering that all the visas sought by the growers be issued.[7]

Although the plaintiff growers had assured the court in the *Frederick County* litigation that they would not be relieved of their responsibility to employ domestic workers even if the injunction admitting the Jamaican workers were granted, the growers refused to hire or hired and then dismissed most of the Puerto Rican workers referred to them. Only 992 of the 2,318 Puerto Rican workers who had been recruited left for the mainland. Flights for the remainder were cancelled following USDOL notification to Secretary Quiros that further referrals should be halted because many of the growers were refusing to employ the Puerto Rican workers who had already arrived at the orchards. Complaint ¶ 64; J.A. 17-18. Of 420 Puerto Rican workers who arrived at the Virginia orchards for the harvest, fewer than thirty were employed three weeks later (*id.*).

The Commonwealth, confronted again with industry-wide resistance to the employment of its citizens, filed the instant action on January 11, 1979 in the Western District of Virginia.[8] The suit sought declaratory and injunctive relief against violations of federal migrant labor laws and regulations by thirty-two Virginia apple growers and various owners, officers, and agents thereof named as defendants. Money damages were not sought. The complaint alleged numerous specific instances of unlawful conduct on the part of various defendants against

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[7] The district court's decision was based in part on its conclusion that issuing the order would cause no harm to domestic workers willing and available to work, whereas failure to issue the order might result in the loss of millions of bushels of apples.

[8] Commonwealth of Puerto Rico ex rel. Carlos S. Quiros v. Alfred L. Snapp & Son, Inc., Civ.A. No. 79-0007(H).

By letter dated December 22, 1981, counsel for the Commonwealth advised the Court pursuant to Supreme Court Rule 40.3 that the Honorable Pedro Barez has succeeded the Honorable Carlos S. Quiros as Secretary, Department of Labor and Human Resources of the Commonwealth. Accordingly, it was requested that an order of substitution be entered naming Secretary Barez as the party on whose relation the suit is brought.

named workers. *See* Complaint ¶¶ 65-68; J.A. 18-25. The complaint further alleged that, by refusing to hire Puerto Rican workers, by terminating Puerto Rican workers on various pretexts, and by subjecting Puerto Rican workers to working conditions less favorable than those provided to Jamaican workers, the defendant apple growers have caused irreparable injury to the Commonwealth by frustrating its efforts to participate in the federal employment system as a labor supply state, hindering the Commonwealth's Secretary of Labor in the performance of his statutory charge to further the interests and promote the opportunities of Puerto Rican laborers, and depriving the Commonwealth's citizens of rights and benefits guaranteed them by federal law. Complaint ¶ 77; J.A. 29.

On January 12, 1979, a nearly identical companion suit was instituted against thirty New York apple growers in the Southern District of New York. *Commonwealth of Puerto Rico ex rel. Quiros v. Bramkamp,* Civ. No. 79-0199 (S.D.N.Y.). The growers in both actions filed identical motions to dismiss for lack of standing. On April 19, 1979, Judge Turk dismissed the Commonwealth's complaint for want of *parens patriae* standing. The court held that because the 1978 harvest jobs were temporary and because direct harm from defendants' conduct befell only 787 migrant workers, less than a substantial majority of the Commonwealth's citizens, the resulting injury to the Commonwealth was neither severe nor generalized enough to permit the Commonwealth to take up the cause.[9]

On October 9, 1980, the United States Court of Appeals for the Fourth Circuit reversed the district court and held that the Commonwealth possesses standing to maintain this action as *parens patriae. Commonwealth of Puerto Rico ex rel. Quiros v. Alfred L. Snapp & Son, Inc.,* 632 F.2d 365 (4th Cir. 1980). The Second Circuit also reversed the district court's dismissal of the complaint in *Commonwealth of Puerto Rico ex rel. Quiros v. Bramkamp,* 654 F.2d 212 (2d Cir. 1981), reasoning that the

[9] Shortly thereafter Judge Kevin T. Duffy of the United States District Court for the Southern District of New York, in a one-sentence memorandum endorsement, dismissed the Commonwealth's complaint in the companion *Bramkamp* case "for reasons stated in the decision of Judge James Turk."

Commonwealth had asserted "a broader range of state interests beyond those of the workers involved," *id.* at 216, and thereby possessed standing to sue as *parens patriae.*

SUMMARY OF ARGUMENT

It is settled that a state has the right to sue as *parens patriae* to prevent or repair harm to its quasi-sovereign interests. *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 258 (1972). It is also settled that a state has standing as *parens patriae* in a controversy which in substance implicates the state's interest in economic supervision. *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 450-451 (1945); *Pennsylvania ex rel. Shapp v. Kleppe*, 533 F.2d 668, 674 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 977 (1976). The Commonwealth, as sovereign representing the collective interests of its people, alleges injury to its economy and to the welfare of its citizens as a result of refusal by the defendant growers, in violation of federal law, to employ its citizens in preference to temporary foreign labor. The gravamen of the Commonwealth's claim "runs far beyond the claim of damage to individuals," *Georgia v. Pennsylvania R.Co.*, 324 U.S. at 452, and was correctly recognized by the court of appeals to implicate the requisite quasi-sovereign interest.

Petitioners seek to minimize the gravity of the Commonwealth's concern by arguing that only a small portion of Puerto Rico's population was directly harmed in 1978. But the court of appeals correctly recognized that while the number of citizens affected is a factor to be taken into account in determining *parens patriae* standing, it is "the magnitude and pervasiveness of the societal harm that must be weighed—not the directness of the injury to particular individuals." 632 F.2d at 370. This Court has scrutinized the number of citizens involved in suits between states in order to prevent attempts to circumvent the Eleventh Amendment, *New York v. New Jersey*, 256 U.S. 296, 309 (1921), but has never imposed a strict "numbers" analysis in *parens patriae* suits brought against private citizens of another state. *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907); *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439 (1945).

Among the prudential considerations which may militate against standing for a state asserting a justiciable quasi-sovereign interest is "the presence or absence of a more appropriate party or parties capable of bringing the suit." *Pennsylvania ex rel. Shapp v. Kleppe,* 533 F.2d at 675. Petitioners argue that standing should be precluded because some of the workers most directly affected have filed lawsuits or may avail themselves of USDOL's Employment Service Complaint System. Both the court below and the Second Circuit in the *Bramkamp* case rejected this argument, the court below noting that migrant workers so destitute they must leave their homes to seek temporary employment are in no position to litigate effectively the issues raised in the Commonwealth's complaint. 632 F.2d at 370. Even more fundamental, the Second Circuit recognized that individual workers' interests are not co-extensive with those of the Commonwealth. 654 F.2d at 217. *Post hoc* remedies such as damages, or sanctions against employers imposed by USDOL's complaint system, are unrelated either to the nature of the interests asserted by the Commonwealth or the injunctive relief sought. The Commonwealth is the most appropriate party to bring suit and the only party capable of pursuing a comprehensive resolution of the issues posed by this controversy.

Petitioners also argue that the individual instances of employer misconduct alleged in the complaint reveal that this suit is an attempt to litigate as a volunteer the personal claims of a mere handful of Puerto Rico's citizens. What petitioners in fact argue are questions of proof for trial. Such proof will necessarily involve particular instances of unlawful conduct as parts of the whole. Petitioners do not address the fact that this lawsuit cannot be for the benefit of particular individuals if the relief sought accrues not to particular individuals but to a presently undefinable portion of Puerto Rico's citizenry.

ARGUMENT

The Interest of the Commonwealth of Puerto Rico in Securing Compliance With Federal Migrant Labor Law in the Wake of a Pattern of Discriminatory Treatment of Hundreds of Puerto Rican Workers by Defendant Growers and Attempts to Frustrate Referral of Puerto Rican Workers to Jobs in the East Coast Apple Harvest Supports an Action As Parens Patriae

It is settled that a state has the right to sue as *parens patriae* to prevent or repair harm to its "quasi-sovereign" interests. *Maryland v. Louisiana,* 451 U.S. 725 (1981); *Hawaii v. Standard Oil Co.,* 405 U.S. 251, 258 (1972). The concept of *parens patriae* is linked to that of sovereignty. *Board of Supervisors of Fairfax County, Virginia v. United States,* 408 F.Supp. 556, 566 (E.D. Va. 1976), *appeal dismissed sub nom. Board of Supervisors of Fairfax County, Virginia* v. *District of Columbia,* 551 F.2d 305 (4th Cir. 1977) (unpublished). As sovereign representing the collective interests of its people, the Commonwealth of Puerto Rico is recognized to possess the capacity of a state to bring an action *parens patriae. Commonwealth of Puerto Rico v. SS Zoe Colocotroni,* 456 F.Supp. 1327, 1337 (D.P.R. 1978), *aff'd,* 628 F.2d 652 (1st Cir. 1980), *cert. denied,* 450 U.S. 912 (1981). [10] It is settled also that injury to a state's economy, if sufficiently severe and generalized, gives rise to a quasi-sovereign interest which will justify a representative action by a state as *parens patriae. Hawaii v. Standard Oil Co., supra; Georgia v. Pennsylvania R. Co.,* 324 U.S. 439, 450-51 (1945); *Pennsylvania v. West Virginia,* 262 U.S. 553, 591 (1923); *Pennsylvania ex rel. Shapp v. Kleppe,* 533 F.2d at 675.

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[10] Puerto Rico is deemed a "State" for purposes of the recruitment and referral of workers through the Employment Service System established by the Wagner-Peyser Act, 29 U.S.C. § 49b(b) (Supp. 1978), and for purposes of the Immigration and Nationality Act, 8 U.S.C. § 1101 (a)(36), (38) (1970).

Whether a state has a sufficient interest in a controversy to sue as *parens patriae* has eluded precise definition.[11] In each instance the question is whether the state has an underlying interest "apart from that of particular individuals who may be affected," *Georgia v. Pennsylvania R. Co.*, 324 U.S. at 451, "the gravamen of which runs beyond the claim of damage to individuals," 324 U.S. at 452, and which is "independent of and behind the titles of its citizens." *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907). Each case poses a question of law which can be determined only by an analysis of the specific facts involved.

Both the court of appeals and the district court recognized that the Commonwealth's concern for the health of its economy and the welfare of its citizens constituted a quasi-sovereign interest which could properly be asserted in a *parens patriae* action. And, in assessing the adequacy of the Commonwealth's interest in the particular circumstances of this case, both courts employed the same three factors: the size of the segment of the population adversely affected, the magnitude of the harm inflicted, and the practical ability of those injured to obtain complete relief. 632 F.2d at 369, Pet.App. at A-22; 469 F.Supp. at 932, Pet.App. at A-9. However, the court of appeals concluded that, in concentrating solely on the 787 individuals directly injured, the district court did not accurately weigh the magnitude of the harm to the general population resulting from the damaged recruitment effort. While affirming that *parens patriae* representation requires that a substantial portion of the citizens of a sovereign be affected, the court of appeals observed that "There has never been cast a hard and fast game of numbers." 632 F.2d at 370, Pet.App. at A-25. The citizenry may be affected either directly or indirectly and, the court held, the proper consideration is "the magnitude and the pervasiveness of the societal harm that must be weighed — not the directness of the injury to particular individuals." *Id.*

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[11] In the closely related area of suits by one state against another in which the original jurisdiction of the Supreme Court is invoked, it has been observed that "[I]t would be objectionable, and, indeed, impossible for the court to anticipate by definition what controversies can and what cannot be brought within the original jurisdiction of this court." Missouri v. Illinois, 180 U.S. 208, 241 (1901).

A. The Commonwealth's Quasi-Sovereign Interest Transcends the Grievances of Individual Workers in the 1978 Harvest And, in Weighing the Magnitude of Harm to the General Population, the Court of Appeals Applied Recognized Principles in Refusing to Limit Its Consideration to Individuals Directly Harmed in the 1978 Harvest

In dealing with the interest asserted by the Commonwealth in this litigation, petitioners have sought to direct attention to the individual employment aspects of the controversy and away from its broader aspects. Thus, both questions presented by the petition for certiorari were cast solely in terms of breach of contract.[12] In their brief on the merits, petitioners have rephrased the questions presented for review so that at least passing reference is made to the fact that the Commonwealth's complaint also alleged "violations of federal statutes and regulations."[13] Despite rephrasing of the questions presented, however, petitioners persist in their attempt to avoid the broader aspects of this complaint. Thus, they say, "The complaint seeks a declaratory judgment that the Virginia growers breached the terms of their contracts with the Puerto Rican farm workers." Brief for Petitioners, 15. Throughout their brief, petitioners seek to atomize this controversy by characterizing it as nothing more than a handful of private employment disputes. Brief for Petitioners, at 16, 24, 26, 27.

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[12] The petition presented two questions for review:

(1) Whether the Commonwealth of Puerto Rico has *parens patriae* standing to sue Virginia apple growers who allegedly breached the employment contracts of certain Puerto Rican workers;

(2) Whether the Commonwealth of Puerto Rico has *parens patriae* standing based upon alleged harm to its general economy where a small number of Puerto Rican citizens were [sic] harmed by the Virginia apple growers' alleged breaches of employment contracts, the impact of the alleged breaches of employment contracts upon the general economy of Puerto Rico was relatively slight, and the affected individual Puerto Ricans were in a position to vindicate their own rights and were actually litigating the same issues in other forums.

Petition for Writ of Certiorari, i, No. 80-1305.

[13] Brief for Petitioners, (i), No. 80-1305.

A review of the background and allegations of the complaint demonstrates that petitioners mischaracterize the nature of this action. The complaint alleges that thousands of temporary farm workers are required each year in the fall by East Coast apple growers, and that many growers have traditionally sought to employ Jamaican workers. Complaint ¶ 60; J.A. 16.[14] The complaint alleged further that, in an effort to secure jobs for unemployed workers, PRDOL in 1976 and again in 1977 attempted to place Puerto Rican workers in jobs in the East Coast apple harvest but that the growers refused to accept many of these workers while others who were hired were dismissed for alleged unproductivity. Complaint ¶ 61; J.A. 16-17.

Prior to 1978, the growers through their representatives had complained that the protections established by Puerto Rico's Public Law 87 rendered it difficult to come to terms with Puerto Rican authorities to use workers from Puerto Rico. *See Galan v. Dunlop,* 411 F.Supp. 268, 270 (D.D.C. 1975), *appeals dismissed and remanded sub nom. Galan v. Usery,* 551 F.2d 467 (D.C. Cir. 1977) (unpublished). In 1978, following the decision of the First Circuit in *Hermandez Flecha v. Quiros,* 567 F.2d 1154 (1st Cir. 1977), *cert. denied,* 436 U.S. 945 (1978), which held that the provisions of Puerto Rico's Public Law 87 imposed conditions on the employment of Puerto Rican laborers more stringent than those of federal law, and thereby rendered such workers legally "unavailable" as domestic workers within the meaning of the Immigration and Nationality Act, *supra,* the Commonwealth legislature was required to focus on Public Law 87. Taking into account that the number of Puerto Rican agricultural workers hired for work on U.S. farms had dropped "alarmingly" from 21,654 in 1967 to only 4,284 in 1977, and that there existed a great mass of potential workers available and willing to obtain lucrative employment, the legislature concluded that it was important for reasons of public policy "to seek a solution that will allow adequate channeling of the aspirations and needs of these persons to obtain a job,

[14] Apple picking is described by USDOL as unskilled labor. *See* Elton Orchards, Inc. v. Brennan, 508 F.2d 493, 499 n. 7 (1st Cir. 1974).

without needlessly harming the workers' interest in obtaining the maximum protection available."[15]

In consequence, the legislature amended the law to authorize the Secretary PRDOL to exempt from the provisions of Public Law 87 job orders referred to him through the Interstate Clearance System of the United States Employment Service. J.A. 35. The Commonwealth legislature thus consented to having Puerto Rican workers protected solely by federal standards but vested the Secretary with "supervisory authority to guarantee full compliance of [sic] the conditions stipulated in the job offer filed by any employer." J.A. 35.

While East Coast growers had complained of the additional burdens imposed by Public Law 87, they continued to complain in August 1978 when they were exempted from those provisions. In a civil action filed on August 31, 1978, *Frederick County Fruit Growers Ass'n, Inc. v. F. Ray Marshall,* Civ.A. No. 77-0086 (W.D.Va.), four associations representing apple growers in three states joined in a civil action to contend that they had not been properly exempted by the Secretary PRDOL from the provisions of Public Law 87.[16] Each association sued on its own behalf and on behalf of its grower members, and sought a declaration that 1,094 Puerto Rican workers should not be deemed "available" U.S. workers within the meaning of the Immigration and Nationality Act. The plaintiff growers also sought a mandatory injunction requiring the Immigration and Naturalization Service to issue 1,460 temporary non-immigrant visas for the admission of foreign workers in addition to the 4,531 visas which INS had already issued the growers for Jamaican workers.

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[15] Preamble to Act of July 13, 1978, Amending Public Law 87; J.A. 34.

[16] Plaintiff Frederick County Fruit Growers Association, Inc., a Virginia corporation composed by fruit growers in Frederick County, Virginia, and the adjoining counties of Clarke, Warren and Shenandoah, was joined in the litigation by Washington County Fruit Growers Association, Inc., a Maryland corporation composed of fruit growers in Washington County, Maryland, along with Valley Growers Cooperative, Inc., a New York non-profit apple growers cooperative, and Mid-Hudson Growers Cooperative, Inc., also a New York non-profit apple growers cooperative.

The district court in the *Frederick County* litigation held that the Puerto Rican workers were available but nonetheless granted the relief requested by the growers because of the court's concern that the crop would be lost without adequate workers to bring it in. In announcing its conclusions of law the court in the *Frederick County* case stated: "The Court is also impressed by the arguments of Counsel for the Plaintiff that certification of these [foreign] workers will do no violence to the domestic workers that are willing and available to work".[17] PRDOL had recruited 1,094 Puerto Rican workers by August 14, 1978, and by September 1, 1978, had recruited a total of 2,318 workers, the full number called for in the job orders transmitted to Puerto Rico.

The complaint in the instant case alleged that, of the total number of 2,318 workers recruited by PRDOL, only 992 workers actually arrived on the mainland and that the remainder never left Puerto Rico because of oral advice from USDOL requesting cancellation of flights because many of the growers had refused to employ Puerto Rican workers who had already arrived. The complaint also alleged that, of the 420 workers who arrived at the Virginia orchards, fewer than thirty were employed three weeks later. Complaint ¶ 64; J.A. 17-18.

In light of the foregoing it is simply impossible to maintain that the Commonwealth's action involves merely a handful of private employment disputes. The resistance to PRDOL's referral efforts in 1976 and 1977, the concerted attempt to have Puerto Rican workers declared unavailable in 1978 even after

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[17] Transcript of September 5, 1978 hearing on motion for preliminary injunction in Frederick County Fruit Growers Ass'n., Inc. v. F. Ray Marshall, Civil Action No. 78-0086(H) (U.S. District Court for the Western District of Virginia), at page 310. In their Memorandum of Points and Authorities In Support of Plaintiff's Motion for a Mandatory Temporary Restraining Order, plaintiffs offered the following assurance:

> Finally, the issuance of such an order would in no way prejudice any U.S. worker who desires to work in the apple harvest. The employment of temporary foreign workers in accordance with federal law would *not* relieve the Plaintiffs in their responsibility to hire qualified and available domestic workers.

Memorandum, at 8.

the growers had been exempted from Public Law 87, and the massive terminations and refusals to hire in the 1978 harvest involve allegations of an industry-wide attempt to discourage participation by Puerto Rican workers in the East Coast apple harvest.

The underlying interest of the Commonwealth is not vague or speculative. Unlike the desire for a free flow of information critical of state-operated mental health programs which the court rejected as a proper quasi-sovereign interest in *Pennsylvania ex rel. Rafferty v. Philadelphia Psychiatric Center,* 356 F.Supp. 500 (E.D.Pa. 1973), the interest of the Commonwealth in being able to refer unemployed workers to the mainland for employment in connection with a major crop is immediate and direct. Referral of unemployed workers is not a matter of indifference to Secretary Barez, on whose relation this action is brought, for he is charged by law with providing opportunities for profitable employment of Puerto Rican laborers.[18] The growers' actions do far more than simply touch upon his area of responsibility, as in *United States ex rel. Chapman v. Federal Power Commission,* 345 U.S. 153 (1953), where standing was recognized, for the Secretary PRDOL has a special duty under the 1978 amendment to Public Law 87 to guarantee compliance, by growers exempted from Public Law 87, with conditions set forth in job offers circulated to Puerto Rico through the Interstate Clearance System. State law, of course, is not conclusive on the federal question of standing but, in testing the adequacy of the state interest, it is appropriate to examine the nature of the functions of a state official and that determination is derived from state law. *Land O'Lakes Creameries, Inc. v. Louisiana State Bd. of Health,* 160 F.Supp. 387 (E.D. La. 1958).

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[18] The statute establishing the Commonwealth Department of Labor and Human Resources provides that the Department "shall patronize, encourage and develop the interests and welfare of the laborers of Puerto Rico, shall make efforts to improve their living and working conditions, and shall promote their opportunities to obtain profitable employment." P.R. Laws Ann. tit. 3, § 305. The Secretary of Labor is charged with direction, administration and general supervision of the department and is the head thereof. P.R. Laws Ann. tit. 3, § 306.

Nor is the Commonwealth legislature indifferent to the referral of unemployed workers to the mainland in connection with employment in a major crop. In the Preamble to the 1978 amendment to Public Law 87, the legislature noted that "the number of workers hired in United States farms has dropped progressively and alarmingly," and that there exists "a great mass of potential workers available and willing to obtain lucrative employment." J.A. 34.

Analysis of the complaint makes clear that this action does not involve a mere vindication of the rights of individual workers. In the first place the acts complained of with respect to named individual workers are simply illustrative of unlawful conduct engaged in on a broad scale. Individual workers do not stand to benefit financially from this case because money damages are not sought. The Commonwealth seeks instead declaratory and injunctive relief which would shift responsibility for compliance onto the growers to respect national policy relating to the preference for domestic workers, but that relief would run to the "great mass of potential workers available and willing to obtain lucrative employment."[19] The Commonwealth has a profound underlying interest in this controversy, and it is plainly not acting in the role of a volunteer to redress purely private grievances.

Petitioners urge upon this Court the numbers analysis adopted by the district court. Brief for Petitioner, 19-21. In denying standing the district court concluded that "relatively few residents of Puerto Rico were harmed directly by the alleged activities of defendants. At best, only 787 persons out of a total population of 2,712,033 were so affected." 469 F.Supp. at 934, Pet.App. at A-13. This segment of the population, the district court concluded, "falls far below the 'substantial majority' suggested by some courts." *Id.* Petitioners go further. They argue that even if all 2,318 Puerto Ricans allegedly referred to the East Coast apple growers in 1978 were

[19]The Complaint alleged that in September 1978 overall adult unemployment on the island of Puerto Rico was 18.5 percent while rural unemployment was running at a rate of 23 percent. Complaint ¶ 4; J.A. 3.

deemed affected by the alleged actions of the thirty-two Virginia growers, that number constituted less than 0.1 percent of Puerto Rico's 1970 population and is also insufficient. Brief for Petitioner, 19.

This Court in *parens patriae* actions has never imposed the strict numbers computation for which petitioners contend. In *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907), an original jurisdiction case brought by a state against private citizens of another state, Georgia sought to enjoin the defendant copper companies from discharging from their Tennessee works sulphuric fumes which were carried by the prevailing winds over Georgia territory. Defendant companies argued as a prerequisite to such an action that "the entire body of the citizens of the complaining state should be affected." 51 L.Ed. at 1041. Without inquiring into the number of Georgia's citizens affected, the Court granted standing, noting:

> The state owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This is a suit by a state for an injury to it in its capacity of quasi-sovereign. In that capacity the state has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain.

206 U.S. at 237. And, in *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439 (1945), the Court adhered to its approach in *Tennessee Copper*, focusing on the nature of the interest asserted and not on the number of citizens directly affected:

> This is not a suit in which a State is a mere nominal plaintiff, individual shippers being the real complainants. This is a suit in which Georgia asserts claims arising out of Federal laws and the gravamen of which runs far beyond the claim of damage to individual shippers.

324 U.S. at 452. The number of citizens involved in a controversy has been a factor utilized by this Court in suits between states as a means of identifying efforts to circumvent the Eleventh Amendment for the benefit of individual citizens.

A showing that a large portion of the population is affected serves as a practical indication that the state is not suing on behalf of private interests. *See e.g., Colorado v. Kansas,* 320 U.S. 383, 392-93 (1943); *North Dakota v. Minnesota,* 263 U.S. 365, 374 (1923); *Pennsylvania v. West Virginia,* 262 U.S. 553, 592 (1923).

Apart from Eleventh Amendment considerations, however, the number of citizens affected is but one factor taken into account in *parens patriae* actions to determine whether the wrongs complained of "are such as affect the public at large." *In re Debs,* 158 U.S. 564, 586 (1895). Were a strict numbers computation adopted, the category of quasi-sovereign rights capable of vindication in *parens patriae* actions would be severely eroded. No action *parens patriae* by Georgia would have lain against either the railroads or the copper companies under a strict numbers computation and, we submit, the denial of such state demands would take on constitutional implications.[20]

The court of appeals recognized that while the number of citizens affected is a factor to be considered in determining *parens patriae* standing, the district court construed this factor

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[20] As Mr. Justice Holmes observed in the *Tennessee Copper* case,

> [S]ome such [State] demands must be recognized, if the grounds alleged are proved. When the states by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still-remaining quasi-sovereign interests; and the alternative to force is a suit in this court.

Georgia v. Tennessee Copper Co., 206 U.S. 230, 237 (1907). Similarly, in the instant controversy the only remedy available to the Commonwealth is this action. The Secretary USDOL is not authorized by statute to seek injunctive relief against employers for violations of temporary labor certification regulations nor to impose penalties. In addition, because of its lack of voting representation in Congress, political remedies are unavailable to the Commonwealth as a practical matter. Thus, for example, the ability to commission a report by the Comptroller General, such as the report from which the growers have quoted excerpts in their petition for certiorari, 5 n. 3, and which they have cited in their brief on the merits, 19, n. 7, is a device essentially unavailable to the Commonwealth.

too narrowly in focusing solely on the number of workers directly affected by Virginia growers in the 1978 harvest. As the court of appeals observed:

> Although a parens patriae representation requires that a substantial portion of the citizens of the sovereign be affected, this requirement is satisfied whether they are affected directly or whether they are indirectly affected. There has never been cast a hard and fast game of numbers. Parens patriae standing is appropriate where a sovereign seeks to protect a vital aspect of the general welfare of a substantial portion of its citizenry from serious, harmful, offensive conduct. It is the magnitude and the pervasiveness of the societal harm that must be weighed—not the directness of the injury to particular individuals.

632 F.2d at 370, Pet. App. at A-25 (footnote omitted). The court observed that the number of farm workers temporarily employed annually does not accurately measure the potential effect of the damaged recruitment efforts on all of Puerto Rico's citizens. Rather than "sidestepping" the issue, as petitioners claim, the court of appeals simply recognized that the adequacy of the state interest cannot be determined solely by an inquiry into the number of citizens directly harmed.

The Commonwealth has *parens patriae* standing not simply because nearly 787 Puerto Ricans were injured by the alleged conduct but because that number represents virtually all of the workers referred by PRDOL to the Virginia growers, and illustrates the capability of the growers to undermine the Commonwealth's entire recruitment effort. The complaint alleged that 787 Puerto Rican workers had been recruited by PRDOL to work for defendant growers but that fewer than thirty had employment three weeks later. Complaint ¶ 64, J.A; 17-18. The Commonwealth is complaining of a pattern of conduct by the Virginia growers which frustrated its entire recruitment effort.

The same pattern of conduct occurred in New York. In the complaint in *Bramkamp* (filed simultaneously in New York with the complaint in the instant case), the Commonwealth

alleged that 611 Puerto Ricans were recruited by PRDOL to work for the defendant New York growers but only 386 actually left Puerto Rico owing to refusal by the growers to hire Puerto Ricans who had already arrived. Of these 386 workers, fewer than fifty were employed in the New York orchards three weeks later.[21] Here again the result was a frustration of the Commonwealth's entire recruitment effort. In effect, the actions of defendant growers proclaimed that they desire to employ foreign workers and that Puerto Ricans need not apply. The court of appeals rightly characterized the alleged actions by the growers as "deliberate efforts to stigmatize the labor force as inferior." 632 F.2d at 370, Pet. App. at A-24.

The Commonwealth's action is thus founded on a number of interests implicated by the growers' actions: the injury to 787 adversely affected workers;[22] the injury to an indeterminate number of unemployed Puerto Rican farm workers discouraged from seeking jobs with the Virginia growers in the harvests after 1978 and who lack interests definite enough to enable them to bring legal actions; the injury to an indeterminate number of unemployed Puerto Rican farm workers who may wish to secure work in future apple harvests; and, should growers of other major crops, such as tobacco or sugar, conclude that the statutory preference for domestic workers need not be observed with respect to Puerto Rican workers, the injury to an indeterminate number of unemployed Puerto Rican farm workers who may fail to secure work in connection with such other major crops. While the impact on the economy of Puerto Rico and the public fisc is not precisely calculable, it is certainly not speculative. To the extent that hundreds or thousands of employment opportunities— even part-time employment opportunities—are each year unlawfully withheld from Puerto Rico, the economy suffers, the flow of public funds for unemployment benefits is substantially increased while income tax revenues are reduced, and the welfare of the general population is impaired.

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[21] Petition for Certiorari in Bramkamp v. Commonwealth of Puerto Rico ex rel. Barez, No. 81-361, at 21a.

[22] Were the New York growers subject to the jurisdiction of the United States District Court for the Western District of Virginia, the number "787" would read "1398."

The court of appeals was correct in stating that the test is not in the numbers alone but in the magnitude and pervasiveness of the societal harm. The Commonwealth's underlying interest transcends the interests of the workers harmed in the 1978 harvest and permits this action.

B. Suits by Puerto Rican Workers for Individual Grievances Suffered in the 1978 Harvest Are Inadequate to Remedy the Commonwealth's Quasi-Sovereign Interest and Are Disproportionate in Relation to the Industry-Wide Conduct Alleged by the Commonwealth

Among the factors traditionally considered in determining whether a state has standing *parens patriae* is the presence of a more appropriate party or parties capable of bringing suit. This notion is said to be derived from the traditional concept of *parens patriae,* i.e., the King's power as guardian of persons under legal disability. *Commonwealth of Puerto Rico ex rel. Quiros v. Bramkamp,* 654 F.2d 212, 217 (2d Cir. 1981), *petition for cert. filed,* 50 U.S.L.W. 3302 (1981). *Parens patriae* standing has been recognized even though remedies are available to aggrieved private parties, *Georgia v. Pennsylvania R. Co., supra,* but where complete relief can be secured through suits by the parties actually aggrieved it has been said that the arguments for *parens patriae* standing become less compelling. *Pennsylvania ex rel. Shapp v. Kleppe,* 533 F.2d at 675 n. 42 (dictum).

Petitioners argue that adequate remedies are available to the affected workers in the local courts of Puerto Rico, through class actions in the federal courts, and through the Employment Service Complaint System, 20 C.F.R. Part 658, established by USDOL to investigate violations of Employment Service regulations. Brief for Petitioners, 29-31. The court of appeals rejected the contention that individual workers are in a better position to litigate the issues here, noting that the migrant farm workers are so destitute that they leave their homes for two or three months each year to seek employment. 632 F.2d at 370, Pet.App. at A-25. The Second Circuit also rejected the growers'

contentions on this point, observing additionally that the interests of the individual laborers deprived of employment in 1978 are not necessarily co-extensive with those of the public which the Commonwealth represents. The court stated:

> Thus, even if the workers could marshal the resources to institute and effectively prosecute actions or a class action in their own behalf, there is no assurance that all named defendants herein would be sued or that relief against widespread and future discrimination would be actively pursued.

654 F.2d at 217. Both circuits were correct in holding that establishment of the rights of future migrant laborers, and the underlying quasi-sovereign interest implicated therein, should not depend upon possible relief obtained by individual workers injured in the 1978 harvest.

Petitioners argue that the court of appeals could have concluded that the workers were not in a position to litigate the issues effectively "only by refusing to acknowledge the numerous lawsuits already brought by the Puerto Rican workers." Brief for Petitioners, 33. But, just as petitioners have adopted a view of the complaint which is constricted, their view of this aspect of the standing question is also constricted, based as it is in the assumption that the Commonwealth's interest is only in the grievances of workers in the 1978 harvest. It is plainly not the quasi-sovereign interest of the Commonwealth to secure money damages for 787 workers, because money damages are not sought. Neither is it the Commonwealth's underlying interest to obtain declaratory judgments so that it may maintain a reputation for fulfilling moral undertakings to its citizens. The underlying interest of the Commonwealth is this: that it be able, each year, to recruit substantial numbers of unemployed Puerto Rican farm workers and refer them to temporary jobs in the large East Coast apple orchards,[23] with assurance that the national policy of preferring domestic workers to foreign workers has been established. Individual workers injured in the 1978 harvest do not necessarily share this interest.

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[23] There are thirty-two orchards in Virginia named in the complaint and thirty in New York.

Moreover, there are several reasons why individual actions are not effective to remedy the Commonwealth's underlying interest. First, the award of money damages against a grower is, as noted above, unrelated to the Commonwealth's quasi-sovereign interest. As a *post hoc* remedy, money judgments against individual growers would not necessarily insure establishment of the national preference for domestic workers which is sought to be achieved.

Second, the fact that a forum is available does not mean that effective relief is available. Asserting that adequate remedies are available to the Puerto Rican workers, petitioners cite a long list of civil actions brought by Puerto Rican workers against some of the defendant Virginia growers in various divisions of the Superior Court of Puerto Rico. Brief for Petitioner, 29 n. 13. But petitioners nowhere advise the Court of their belief that, because there appears to be no basis for the exercise of personal jurisdiction, default judgments entered therein against defendant growers are unenforceable in Virginia and New York.[24]

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[24] In an affidavit given in Juan Valderrama Rios v. F. Ray Marshall, No. 79 Civ. 5711 (S.D.N.Y., filed October 22, 1979), petitioners' attorney states, in pertinent part:

> As a result of certain events during the 1978 harvest season, certain Puerto Rican workers filed suits in the courts of Puerto Rico against a number of the defendant apple growers in this case, claiming that their contracts of employment had been breached. I advised these defendant apple growers that they should not enter appearances in these cases for two basic reasons. First, based on past experiences, I felt that the cost of defending these law suits in the courts of Puerto Rico, where all the pleadings would have to be in Spanish, would far exceed any possible recovery against the defendant apple growers who had been sued in those cases. Secondly, there did not appear to be any basis for the courts of Puerto Rico to exercise personal jurisdiction over the defendant apple growers. Therefore, we felt that, even if default judgments were obtained, we could raise the issue of lack of personal jurisdiction when the Puerto Rican plaintiffs attempted to enforce the judgments in the courts of New York.

Supporting Affidavit of S. Steven Karalekas, dated August 5, 1980, Attached to Defendant Apple Growers Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction.

With respect to *Juan Valderrama Rios v. F. Ray Marshall,* Civ. No. 79-5711 (S.D.N.Y., filed October 22, 1979), the class action which petitioners point to as one of the remedies available to the affected Puerto Rican workers, the New York grower defendants in that case, who are represented by counsel for petitioners in this case, have taken the position that plaintiff workers may not bring a class action against apple growers with whom they had no dealings on behalf of workers who did have dealings with those growers. Counsel in *Valderrama Rios* argues that the action "involves an aggregation of individual claims that particular workers may have against particular apple growers," and, because plaintiffs in that case have not properly alleged a conspiracy, "each plaintiff would have standing to sue only the apple grower which [sic] has allegedly subjected him to discriminatory treatment."[25]

Another remedy available to affected Puerto Rican workers, petitioners assert, is the Employment Service Complaint System established by USDOL to investigate violations of Employment Service regulations. But petitioners do not even mention, much less come to terms with, the directly contrary position of the Secretary USDOL who administers the Employment Service Complaint System. In Brief for the Secretary of Labor as Amicus Curiae in the *Bramkamp* case,[26] the Secretary concludes that the Commonwealth's asserted interest in protecting its right to full participation in the Employment Service System neither infringes on nor is inconsistent with federal

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[25] Defendant Apple Growers' Reply to Plaintiffs' Motion for Class Certification at 5, 8, filed November 17, 1980 in Juan Valderrama Rios v. F. Ray Marshall, Civ. No. 79-5711 (S.D.N.Y.).

[26] Resp. App. 1a-11a. Following oral argument in *Bramkamp* before the Second Circuit, that court requested the Solicitor General of the United States to file a brief as amicus curiae on behalf of the appropriate government agency on the issues raised in the case. Because the Secretary of Labor has the principal federal responsibility for administration of the federal-state employment service system, and because of the Secretary's role in certifying the use of temporary foreign workers, the brief amicus was submitted by the Secretary of Labor.

interests. Concerning the complaint system, the Secretary states:

> [R]egardless of the efficacy of the [employment service complaint] system in handling individual complaints, these procedures were not intended to redress Puerto Rico's allegations of systemic mistreatment of Puerto Rican workers. The allegations in this complaint illustrate the difficulty the Department would have in investigating an alleged pattern of misconduct involving hundreds of workers and dozens of employers spread over one or more states. These allegations, if true, would constitute violations of law which could entitle plaintiff to an injunction enforceable by contempt proceedings.

Id., at 8a-9a. As the Secretary observed, the allegations of the Commonwealth involve systemic mistreatment of Puerto Rican workers and it is that type of conduct which transcends the individual complaints and implicates the Commonwealth's underlying, quasi-sovereign interest. Suits brought by individuals would be "wholly inadequate and disproportionate" as remedies for such conduct. *See Missouri v. Illinois*, 180 U.S. 208, 241 (1901). The interest of the Commonwealth lies not in remedies after-the-fact but in being able to refer Puerto Rican workers to jobs in future East Coast apple harvests. Even if individual Puerto Ricans based in the Commonwealth could utilize to effect the complaint procedure against growers based in Virginia, it is simply not designed to handle allegations of harmful industry-wide conduct.

C. The Nature of the Commonwealth's Underlying Interest Is Not Altered by the Possibility That Proof of Systemic Mistreatment May Involve Evidence of Conduct Toward Individuals

Petitioners finally argue that the individual and personal nature of the Commonwealth's claim is revealed by the fact that the allegations of the complaint involve conduct respecting particular individuals. Thus, petitioners argue, a court would have to examine the facts surrounding each employer-employee relationship to determine whether termination was justified in

each case. Brief for Petitioners, 25-27. Because the case involves different sets of facts and circumstances, petitioners assert, it is no more than an attempt to litigate the personal claims of a mere handful of Puerto Rican citizens in the guise of a *parens patriae* lawsuit.

There are two answers to this contention. First, the entire notion of *parens patriae* actions involves standing of states to bring suits on behalf of citizens in a representative capacity by reason of some injury that affects the population in a general way. *See Pennsylvania ex rel. Shapp v. Kleppe,* 533 F.2d at 673. The alleged harm must have its impact somewhere, however, and it is the point of impact which will be the subject of proof. In *Georgia v. Tennessee Copper Co., supra,* the state's case was presumably made out through evidence concerning the effects of sulphur dioxide on particular areas of land adjoining the Tennessee border. Because the Commonwealth in the instant case complains that its attempt to refer 787 Puerto Rican workers was frustrated by the acts of defendant growers, the case will be made out through evidence of actions taken by the growers respecting those workers although the relief sought runs to Puerto Rican agricultural workers in the future. "Injury to the collective will commonly include injury to members of the collective." *Hawaii v. Standard Oil Co.,* 405 U.S. 251, 269 (1972) (dissenting opinion). The fact that the proof necessarily involves particular individuals does not alter the Commonwealth's underlying interest or convert the nature of the action into an action solely for the benefit of such individuals.

Neither does the fact that the proof involves a number of defendants in their relationships with individual workers alter the essential nature of the action. While proof might be easier were there a single, monolithic source of injury, the courts are familiar with cases involving multiple defendants. In fact, the evidence may disclose common patterns of conduct toward Puerto Rican workers. In any event, petitioners are arguing matters of proof while the question in this Court involves the propriety of the motion to dismiss.

Throughout this controversy petitioners have insisted that the massive resistance to the hiring of Puerto Rican workers in the 1978 apple harvest gives rise to nothing more than individual grievances. The workers, they say here, have a forum in the courts of Puerto Rico for breach of contract claims, but in the actual proceedings personal jurisdiction is denied. The workers, they contend, are able to resort to class actions to vindicate their grievances, but in the actual proceedings the New York growers deny the validity of certifying the class. The Commonwealth, they say, may not bring this action *parens patriae* for the grievances are strictly individual. At the same time, however, it has pleased the growers to join together through their associations in an effort to have Puerto Rican workers declared unavailable under U.S. law by reason of the "onerous" provisions of Public Law 87 and then, following the 1978 amendment to Public Law 87, to join together again to have Puerto Rican workers declared unavailable because the growers had not been properly exempted from the provisions of Public Law 87. We submit that in the face of such conduct, directed toward Puerto Rican workers as a class, the Commonwealth is entitled to take up the cause, and that the court below, as well as the Second Circuit, was correct in deciding that standing exists in the Commonwealth as *parens patriae.*

CONCLUSION

For the reasons set forth, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

PAUL A. LENZINI
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 624-8800
Counsel for Respondent

Of Counsel:

Luis Guinot, Jr.
Lynda Troutman O'Sullivan
Cathy L. Martin

and

CHAPMAN, DUFF AND PAUL
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dated: February 12, 1982